

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 7. DEPARTMENT OF HEALTH SERVICES CHILDREN'S REHABILITATIVE SERVICES

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

Notice of Proposed Rulemaking: 9 A.A.R. 4274, October 10, 2003

2. Sections Affected

Article 7
R9-7-701

Rulemaking Action

New Article
New Section

3. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 36-104(3), 36-132(A)(1), and 36-136(F)

Implementing statute: A.R.S. § 36-261

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
1740 W. Adams, Suite 202
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

or

Name: Cathryn Echeverria, Office Chief

Address: Department of Health Services
Bureau of Community and Family Health Services
Office of Children with Special Health Care Needs
150 N. 18th Avenue, Suite 330
Phoenix, AZ 85007

Telephone: (602) 542-2584

Fax: (602) 542-2589

E-mail: cecheve@hs.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

9 A.A.C. 7, Department of Health Services, Children's Rehabilitative Services was adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1991, Ch. 140, § 4, and was effective June 30, 1992. The rules did not reflect current Department policy or current practice and the Department allowed the rules to expire on August 31, 2002. The Department revised the rules consistent with current Department policy and current practice and submitted a Notice of Proposed Rulemaking that included Title 9, Chapter 7, Articles 1 through 7. The Notice of Proposed Rulemaking was published in the *Arizona Administrative Register* on October 10, 2003. An oral proceeding was held on November 17, 2003 and a Notice of Final Rulemaking was submitted to the Governor's Regulatory Review Council for review. Because an issue involving the statutory authority for the grievance and appeal process in

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Article 7 could not be resolved before the G.R.R.C. meeting deadline, the Department requested that Article 7 be held. The remainder of the rules, Articles 1 through 6, were approved by G.R.R.C. at its February 3, 2004 meeting. The Department has resolved the issue and the proposed supplemental rules, which include Article 7, eliminate the grievance process at the regional contractor's level.

6. An explanation of the substantial change which resulted in this supplemental notice:

The proposed rules set forth the procedures for a CRS member to submit a grievance to a regional contractor regarding the provision or non-provision of covered services. The proposed rules contained procedures for the CRS member to submit a grievance of a regional contractor's recommended decision to the regional contractor before submitting an appeal of the regional contractor's recommended decision to the Department. The supplemental proposed rules eliminate the grievance at the regional contractor's level but retain the procedures for the CRS member to submit an appeal of the CRS provider/regional contractor's intended decision to the Department regarding the provision or non-provision of covered services.

In addition, the time-frames for the Department providing notice to a member regarding an appeal and for a member to submit any necessary additional documentation have been amended to be consistent with the newly adopted time-frames in 9 A.A.C. 34, Arizona Health Care Cost Containment System, Grievance System.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Cost Bearers

Department

The rules will change the current process for CRS member grievances and appeals. CRS members will no longer submit grievances to the regional contractors, but will submit appeals directly to the Department for review. The Department estimates that CRS members will submit 36-40 appeals with the Department on an annual basis.

Beneficiaries

CRS members

A CRS member will benefit from a decrease in processing time for an appeal. The CRS member will no longer be required to submit a grievance to a regional contractor but will be able to submit an appeal directly to the Department.

Regional contractor

A regional contractor will benefit from the deletion of the grievance process at the regional contractor's level. The regional contractor will experience a decrease in staff time to process grievances.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
1740 W. Adams, Suite 202
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

or

Name: Cathryn Echeverria, Office Chief

Address: Department of Health Services
Bureau of Community and Family Health Services
Office of Children with Special Health Care Needs
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Phoenix, AZ 85007

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E-mail: cecheve@hs.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceed-

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ing is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department has scheduled the following oral proceeding:

Date: May 4, 2004
Time: 1:00 p.m.
Location: 150 N. 18th Ave., Room 415B
Phoenix, AZ 85007
Close of record: 5:00 p.m, May 4, 2004

The Department will accept written comments until the close of record.

Persons with a disability may request a reasonable accommodation by contacting Valerie Grina at vgrina@hs.state.az.us or (602) 364-2580. Requests should be made as early as possible to allow sufficient time to arrange for the accommodation.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

Not applicable

13. The full text of the changes follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 7. DEPARTMENT OF HEALTH SERVICES
CHILDREN'S REHABILITATIVE SERVICES**

ARTICLE 7. ~~EXPIRED~~ MEMBER APPEALS

Section

R9-7-701. ~~Expired~~ Member Appeals

ARTICLE 7. ~~EXPIRED~~ MEMBER APPEALS

R9-7-701. ~~Expired~~ Member Appeals

A. For purposes of this Article, "appeal":

1. Means a written expression of dissatisfaction with a regional contractor's intended decision not to provide a covered service to a member submitted to the Department by the member or, if the member is a minor, the member's parent, or
2. For a member who has Title XIX or Title XXI health care insurance, has the same meaning as in A.A.C. R9-34-202.

B. If a member has Title XIX or Title XXI health care insurance, the member and the Department shall comply with the requirements for an appeal in A.A.C. Title 9, Chapter 34, Article 2.

C. If a member does not have Title XIX or Title XXI health care insurance, the member shall comply with the requirements for an appeal in this Article.

D. If a member or, if the member is a minor, the member's parent, does not submit an appeal within 60 days from the date of a regional contractor's intended decision, the intended decision becomes final.

E. To submit an appeal of a regional contractor's intended decision not to provide covered services, a member shall submit to the Department, no later than 60 calendar days from the date of the intended decision that is the subject of the appeal, a written notice containing:

1. The name of the member.
2. The address of the member.
3. The factual basis for the appeal, and
4. The relief requested.

F. The Department shall provide a member or, if the member is a minor, the member's parent with written notification regarding an appeal within 30 days from the date of receiving the appeal as follows.

1. If the Department determines that additional documentation or information is necessary to make a decision, the Department shall provide a written notice to the member requesting that the member provide the additional documentation or information within 14 calendar days after the date of the request.
 - a. If the member submits the requested additional documentation or information in subsection (F)(1) within 14 calendar days from the date of the Department's request, the Department shall, within 14 calendar days from the date of receiving the requested additional documentation or information, provide notice to the member according to subsection (F)(2) or (F)(3).

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- b. If the member does not submit the requested additional documentation or information within 14 calendar days from the date of the Department's request, the Department shall consider the appeal withdrawn.
- 2. If the Department determines that the intended decision does not comply with A.R.S. Title 36, Chapter 2, Article 3 or this Chapter, the Department shall reverse the intended decision and provide written notice of the Department's decision to the member and the regional contractor.
- 3. If the Department determines that the intended decision complies with A.R.S. Title 36, Chapter 2, Article 3 and this Chapter, the Department shall provide a written notice:
 - a. To the member that complies with A.R.S. § 41-1092, and
 - b. To the regional contractor of the Department's decision.
- G.** A member may request a hearing on the Department's decision according to A.R.S. § 41-1092.03.